

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

JOSE ANTONIO BARRETO-GUILLEN	§	
	§	
Plaintiff	§	
v.	§	CIVIL ACTION NO. C-11-14
	§	
UNITED STATES OF AMERICA	§	

ORDER OF DISMISSAL

On January 25, 2011, Plaintiff Jose Antonio Barreto-Guillen filed a motion seeking the return of property in his criminal case, Cr. No. C-03-079(2). (D.E. 1.) The Court ordered that the motion be severed and a new civil case file be opened. (D.E. 2.) For the reasons stated herein, the Court dismisses this action on Plaintiff's oral motion to do so.

I. Relevant background.

Plaintiff was arrested on February 24, 2003. (See 2:3-cr-079(2)). By indictment filed March 20, 2003, Plaintiff was charged with knowingly possessing with intent to distribute ten kilograms of cocaine in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(A), (count 1); conspiracy to possess with intent to distribute 10 kilograms of cocaine in violation of 21 U.S.C. §§ 846, 841(a)(1) and 841(b)(1)(A), (count 2); and re-entry of an alien who had previously been deported and removed from the United States subsequent to a felony conviction, in violation of 8 U.S.C. § 1326, (count 4). (Id. D.E. 1). Pursuant to a plea agreement (Id. at D.E. 45), on May 29, 2003, Plaintiff pled guilty to possession with intent to distribute cocaine, and on August 21, 2003, the Court sentenced

him to 120 months in the custody of the Bureau of Prisons (BOP) on count 1, and to 60 months in the BOP for illegal re-entry, in addition to fines and special assessments. (Id. at 90). Judgment of conviction was entered on August 26, 2003. (Id. D.E. 94)

II. Motion for return of property.

On January 24, 2011, Plaintiff filed the instant motion for return of property. (D.E. 1). Plaintiff relates that, at the time of his arrest, federal agents took into their possession his Mexican forms of identification. Specifically, these forms of identification are:

1. Stockbreeder Association Card (Asociacion);
2. Voters Identification Card (Credencial De Elector) and
3. Town Hall Tecpan De Galeana ID Card (Identificacion Del Ayuntamiento De Tecpan De Galeana).

(D.E. 1).

Plaintiff claims that his projected release date is November 11, 2011, at which time he will be deported to Mexico. Plaintiff requests the return of his identification because he believes “every Mexican citizen is required to have upon him an identification.” (D.E. 1 at 2).

By status report dated June 14, 2011, the Government reported that the Border Patrol’s file for Plaintiff did not show a record of personal property on the inventory form or in the narrative of his arrest, nor did it contain any images of the identification forms at issue. (D.E. 12). In addition, the Freer Border Patrol Station property destruction archives that date back to 2007, had no record of destroying personal property belonging

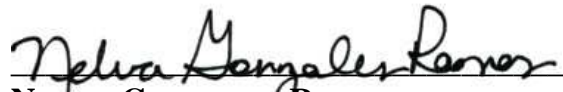
to Plaintiff.

A telephone conference was held on August 17, 2011. A Spanish speaking interpreter was used. At the hearing, Plaintiff was told that the Government had searched for Plaintiff's property, but it had not found the forms of identification that Plaintiff was requesting. Indeed, the Government had no record of the property allegedly seized. Plaintiff stated that, because the property was not available, he no longer desired to pursue his claims, and he moved to dismiss this action. The Government did not oppose the dismissal.

III. Conclusion.

Accordingly, upon Plaintiff's representation that he is no longer seeking the return of his property, and his oral motion to dismiss this proceeding, this action is dismissed without prejudice.

ORDERED this 19th day of August, 2011.


NELVA GONZALES RAMOS
UNITED STATES DISTRICT JUDGE